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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,020	02/25/2000	Kenneth B. Higgins	2159	7651

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/513,020		HIGGINS, KENNETH B.	
	Examiner		Art Unit	
	Cheryl Juska		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12, 13</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Prosecution Application

1. The request filed on May 6, 2002, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/513020 is acceptable and a CPA has been established. An action on the CPA follows.

Response to Amendment

2. Amendment A, submitted as Paper No. 11 on May 6, 2002, has been entered. Claims 1 and 2 have been cancelled, while claims 3 and 4 have been amended as requested. New claims 5-7 have been added. Therefore, the pending claims are 3-7.

Election/Restrictions

3. Newly submitted claim 7 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 7 is drawn to a method, while the originally present claims are article claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 7 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 3 and 4 stand rejected under 35 U.S.C. 102(b) as being anticipated by the following prior art references:

- a. US 4,522,857 issued to Higgins.
- b. JP 04-119842 assigned to Toray.
- c. JP 04-119841 assigned to Toray.
- d. DE 2310970 issued to Hendrix.
- e. CH 476,891 issued to Schuette et al.
- f. DE 1560755 issued to Maysenholder.

Applicant has amended claim 3 to include the recitations of "an adhesive free cushion backed carpet," "a layer of polyurethane foam," and "corners being manufactured to have a cup...and a curl...prior to installation." However, said amendments to claims 3 and 4 are insufficient to overcome said rejection. Specifically, all of the cited art teaches adhesive free carpet tiles having a polyurethane cushion backing. With respect to the recitation of the corners, said limitation is not given patentable weight at this time. Said limitation is descriptive of an individual carpet tile prior to installation. However, Applicant is claiming an installation of a plurality of installed carpet tiles, rather than uninstalled tiles. Thus, said limitation is reflective of an intermediate product and not the claimed final product. Therefore, said rejection is maintained from section 2 of the last Office Action.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins '857 in view of US 5,540,968 issued to Higgins.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the two cited Toray references, the Hendrix reference, the Schuette reference, and the Maysenholder reference as applied to claim 3 above, and in further view of Higgins '857 and US 5,540,968 issued to Higgins.

Higgins '857 teaches a foam thickness ranging from 0.1 to 1.0 inches (col. 2, lines 1-2). Higgins '857 is silent with respect to the density of the foam or the overall thickness of the carpet tile. However, the presently claimed foam densities are well-known in the art. Specifically, Higgins '968 teaches a preferred polyurethane foam density of 12-20 lbs/ft³ (col. 6, lines 35-39). Thus, it would have been obvious to one skilled in the art to employ a foam as taught by Higgins '968 in the invention of Higgins '867 with the expectation of achieving a quality carpet cushion layer. Additionally, it is argued that the overall thickness of the carpet tile as claimed, is well within the skill of an ordinary worker in the art since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Similarly, the thickness and density taught by Higgins '857 and Higgins '968 renders obvious the cited primary references of

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Toray, Hendrix, Schuette, and Maysenholder. Therefore, claims 5 and 6 are rejected as being obvious over the cited prior art.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER